Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1976.

No. 76-239.

JAMES B. BAMFORD, Chairman; DAVID SHIREY, STEWART DE TURK, BOARD OF ASSESSMENT APPEAL, COUNTY OF BERKS,

Petitioners,

v.

DONALD F. GARRETT, SHARON B. GARRETT, VERA A. TURPIN,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Respondents Donald F. and Sharon B. Garrett and Vera A. Turpin oppose the Petition For Writ of Certiorari filed herein [1] on the grounds set forth herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

In addition to the Constitutional and Statutory provisions set forth in the Petition, this case involves the Thirteenth Amendment to the Constitution and the Civil Rights Act of 1866,[2] as amended, now 42 U. S. C. §§ 1981, 1982.

Thirteenth Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

42 U. S. C. § 1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and

1. Referred to hereinafter as "the Petition".
2. 14 Stat. 27 (1866).

shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U. S. C. § 1982

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Contrary to the text appearing in the Petition,[3] the word "State" is not italicized in the Fourteenth Amendment.

QUESTIONS PRESENTED BY THE PETITION.

1. Did the Court of Appeals correctly apply established legal precepts in holding state court remedies to be inadequate which were at best either (1) unprecedented and conjectural or (2) impractical, inefficient and incapable of correcting the unconstitutional discrimination alleged in the Complaint? *Township of Hillsborough v. Cromwell,* 326 U. S. 620 (1946).

2. Did the Court of Appeals correctly formulate and apply legal principles in upholding federal jurisdiction where the relief requested in the Complaint (1) would increase the revenues of the County of Berks and City of Reading and, (2) would not interrupt the collection of any tax, but instead the inadequate state remedies could drastically reduce the revenues of both the County of Berks and City of Reading? *Matthews v. Rodgers,* 284 U. S. 521 (1932); *Hargrave v. McKinney,* 413 F. 2d 320 (5th Cir. 1969).

3. At p. 4.

STATEMENT OF THE CASE.

I. Nature of the Case.

This action was brought by, and on behalf of a class consisting of, persons owning and occupying residential property in areas of the City of Reading, Pennsylvania, with substantial concentrations of non-White population. According to the Complaint[4] such properties are assessed at values which are higher than the values assigned to similar properties in predominantly or exclusively White areas of Reading and Berks County, Pennsylvania and their assessments constitute a greater percentage of their actual value than in the case of properties in White areas generally.

According to the Complaint, plaintiffs are resident homeowners in a largely non-White area in Reading, Berks County, Pennsylvania. Defendants are the Board of Assessment Appeals of Berks County ("Board") and the members thereof. It is the Board's legal duty to make and to supervise the making of annual real property assessments throughout Berks County. Both the Berks County and City of Reading real estate and school taxes are levied in proportion to these assessments.

These assessments are not in fact at a uniform fraction of full or actual value, but vary from area to area according principally to the racial, and secondarily to the economic, classification of the residents of the areas. Plaintiffs thus bear a disproportionately heavy burden in their city and county real estate and school taxes as a result of unlawful discrimination.

4. Which must be taken to be factually correct in reviewing the disposition of a motion to dismiss at the outset of the case. *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.,* 382 U. S. 172, 174-5 (1965).

The discrimination is systematic and it is intentional. It is implemented by assessment practices designed to yield the aforesaid pattern of discriminatory assessments, and it is those assessment practices which are the subject of the prohibitory relief sought in the action. Among the practices so employed, itself a violation of Pennsylvania statute,[5] is the failure to make annual assessments. Instead, non-White areas of declining value and White areas of increasing value are not re-assessed for periods far in excess of one year. Thus homeowners in predominantly non-White areas, themselves by definition mostly non-White, are subject to higher taxes than are most White homeowners of Berks County. Such discriminatory taxation is a substantial infringement upon plaintiffs' rights and is a significant disincentive to home ownership and upkeep within the City of Reading.

The Complaint alleges in six counts that the real property assessments and assessment practices in Berks County discriminate against plaintiffs and those similarly situated on the basis of race and wealth, in violation of 28 U. S. C. §§ 1981 and 1983, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, the Constitution of the Commonwealth of Pennsylvania and various statutes thereunder. The relief sought is exclusively equitable in nature, specifically requiring a non-discriminatory assessment of owner-occupied property within Berks County. As is plain from the Complaint itself, and contrary to the Petition,[6] no injunction was sought against the assessment, levy or collection of the present tax pending such systematic reassessment. As a matter affecting both state and federal jurisdiction, there is a substantive difference in the effect upon a local government's finances between enjoining ongoing discriminatory assessment practices *in futuro* and restraining a present assessment.

5. 72 P. S. § 5344(a).

6. Petition, pp. 2, 3 and 6.

II. Proceedings in the District Court.

The Complaint was filed on August 13, 1974. Defendants filed a motion to dismiss, alleging in the main a lack of subject matter jurisdiction, on September 13, 1974. On September 14, 1974 plaintiffs served and filed interrogatories and document requests on defendants. Defendants' response to plaintiffs' discovery, filed October 17, 1974, was limited to objections to all discovery on the grounds, *inter alia,* that no discovery was proper while the motion to dismiss was pending. Promptly thereafter, on October 22, 1974, plaintiffs noticed and served their motion to compel discovery and to strike objections.

By Memorandum and Order dated May 20, 1975, the District Court granted the motion to dismiss, finding that plaintiffs had a plain, speedy and efficient remedy in state courts and holding the action barred by the Tax Injunction Act. No Order was entered concerning the pending motion to compel discovery. The District Court considered that question to be moot in view of its ruling on the motion to dismiss.

The District Court never considered whether 28 U. S. C. § 1341 ("The Tax Injunction Act") might be inapplicable at all, but proceeded immediately to find Pennsylvania state remedies, at law or in equity, adequate. The adequacy of the state legal remedy was founded upon procedures which the District Court recognized were characterized by "facial deficiencies as to the individual remedies in the statute." (A7). The District Court relied upon hypothetical mass appeals for which there is no provision or precedent in Pennsylvania law and the "ingenuity expected of assessment authorities" (A7) to

create an adequate remedy at law. The state equitable remedies were based upon the interpretation of Pennsylvania appellate cases which stated that state courts may have jurisdiction over challenges to state taxing *statutes*, but never over challenges to assessment *procedures*. E.g. *Crosson v. Downingtown Area School District*, 270 A. 2d 377, 380-1, 440 Pa. 468, 475 (1970).

III. Proceedings and Decision in the Court of Appeals.

Respondents appealed from the dismissal by the District Court. On appeal they raised three principal issues:

1. Does 42 U. S. C. § 1981, which specifically prohibits racial discrimination in taxes, supersede the Tax Injunction Act in this case?
2. Did the District Court err in not allowing plaintiffs to have discovery on the jurisdictional issues? and
3. Did state law offer any adequate remedy?

The Court of Appeals found it necessary to reach only the last of these issues and held in its opinion of June 16, 1976 that no state remedy was adequate and that federal jurisdiction was properly invoked as to claims of racial discrimination.[7]

The Court of Appeals scrutinized Pennsylvania's statutory case law and concluded that no plain, speedy and efficient remedy was open to plaintiff in state court. The holding that state equity jurisdiction was subject to "substantial uncertainty" and therefore inadequate (A29) was based upon the facts that no Pennsylvania Court had ever enjoined a tax due to its unconstitutional method of

7. The Court of Appeals did not rule on respondents' other claims (A20, n. 4).

assessment and the cases of Pennsylvania's highest court which make it clear that the "contracted scope of equitable jurisdiction"[8] might reach an unconstitutional *taxing statute*, but not to the unconstitutional *method of application* of an otherwise valid tax (A26-29).

At oral argument, in response to a question of Judge Gibbons, counsel for Petitioners admitted that the procedures and remedies available in Pennsylvania were indistinguishable from those found inadequate in *Township of Hillsborough v. Cromwell, supra.*

Pennsylvania's administrative and legal remedies were held inadequate (A34) not only because no class action or mass appeal would be possible (as the Petition suggests),[9] but also because the law courts cannot grant effective, ongoing relief against what must be taken to be systematic and deliberate discrimination (A33-34). The Court of Appeals held:

> "Where a state remedy for an allegedly unlawful tax requires repetitive suits year after year, '[r]esort may be had to equity . . . to avoid the multiplicity of actions." (A34).

The mandate of the Court of Appeals was routinely stayed, without opposition, pending the disposition of the Petition.

8. The District Court's own description (A11).

9. Although the financial infeasibility of the necessary thousands of individual actions by members of a class which is by definition poor certainly speaks to the efficiency of the state remedy.

REASONS WHY THE WRIT SHOULD NOT ISSUE.

I. The Decision of the Third Circuit Is Consistent With the Law of the Other Circuits.

Petitioners cite nine cases [10] and discuss only three of them in reaching the rather startling conclusion that the opinion of the Third Circuit is "singularly contrary" to the law of six other Circuits.[11]

The cases relied upon by Petitioners actually demonstrate that the Court below not only applied the correct rule of law to this case, but did so in harmony with the law of its sister courts.

In *Miller, Levitt* and *Mandel,* the Courts pointed out that the cases before them merely called for an interpretation of state or federal statutory language, and that once the statutes were interpreted the state officials could be expected to enforce them as construed. *Miller, supra,* at 32; *Levitt, supra,* at 1151; [12] and *Mandel, supra,* at 367. Here, on the contrary, the constitutional and statutory proscriptions against discrimination are plain. They are simply being disobeyed by County officials. As the Third Circuit aptly noted:

10. *Illinois Central R. R. v. Howlett,* 525 F. 2d 178 (7th Cir. 1975) *cert. denied* 44 U. S. L. W. 3532 (1976); *Miller v. Bauer,* 517 F. 2d 27 (7th Cir. 1975); *Gray v. Morgan,* 371 F. 2d 172 (7th Cir. 1966) *cert.denied* 386 U. S. 1033 (1967); *Aluminum Co. of America v. Dept. of Treas. of Michigan,* 522 F. 2d 1120 (6th Cir. 1975); *Mandel v. Hutchinson,* 494 F. 2d 364 (9th Cir. 1974); *American Commuters Assn. v. Levitt,* 405 F. 2d 1148 (2d Cir. 1969); *Hickmann v. Wujick,* 488 F. 2d 875 (2d Cir. 1973); *United States v. State Tax Commission,* 481 F. 2d 963, 972-976 (1st Cir. 1973); *Bland v. McHann,* 463 F. 2d 21 (5th Cir. 1972), *cert. denied* 410 U. S. 966 (1973).

11. All.

12. The discussion of § 1341 in *Levitt* is *obiter dictum,* because both the District and Circuit courts proceeded to the merits and disposed of the case under Rule 12(b) 6, rather than 12(b)(1). 405 F. 2d, at 1153.

> "It is clear, however, that plaintiffs' claims, if true, will require some sort of continuing relief which is not available from the statutory review procedure." (A34, n. 15).

No Circuit has held that § 1341 bars federal relief where the state court remedy would be a series of lawsuits, year after year.

Mandel is significant because it underscores the easily forgotten truth that the adequacy of a state remedy depends upon the procedural nature of the state remedy, as well as whether the remedy provides the relief required. The *Mandel* court cited California's "liberal joinder provisions", recoverability of court costs and remedy by way of mandamus,[13] in support of the adequacy of California's remedy in a case of statutory construction, not of willful prejudice. Similarly, more suitable remedies and procedures were available to plaintiffs in *Illinois Central R. R., supra,* at 181, n. 4 (declaratory judgment, stay of payment); *Miller, supra,* at 32 (consolidation of appeals); *Hickmann, supra,* at 876 (expedited appeal, declaratory judgment); *State Tax Commission, supra,* 974 (declaratory judgment, abatement action); *Bland, supra,* at 23 (appeal of right to Mississippi Supreme Court, injunction action by one or more taxpayers).

The Fifth Circuit, in *Bland,* found the absence of a class action procedure insufficient *standing alone* to render inadequate an otherwise adequate state remedy. In the instant case, the absence of a class action procedure was one element of an uncertain and ambiguous series of state remedies which, viewed as a whole, was not plain, speedy or efficient. *Bland* involved a unique set of facts where the Negro property owners were the victims of a one-time, *sui generis* reassessment allegedly in retaliation for peace-

13. 494 F. 2d, at 367.

ful civil rights protests the previous summer and fall. The Black taxpayer plaintiffs in *Bland* sought in federal courts *to enjoin the collection* of the discriminatorally assessed taxes and *to compel a refund* of taxes paid, with interest. The Court of Appeals remitted plaintiffs to the state courts where they could pursue actions for refunds and for equitable relief, all of which could be accomplished in a single action by each taxpayer. 463 F. 2d, at 28.

Of critical importance is that in *Bland*, there is no suggestion of a need for ongoing relief unavailable in a single state court action. The uncertainty of a state equity forum in this case mandates the opposite result from *Bland*, based upon application of the same legal precepts and the test of "plain, speedy and efficient". *Bland;* Id., n. 23.

II. The Purposes of the Tax Injunction Act Indicate That Federal Jurisdiction Is Appropriate in This Case.

Bland is noteworthy as support for the decision at bar for another reason. It is another of a long line of decisions which reason from the principal purposes of § 1341 to the expansiveness or narrowness of its construction in a given case.

As recognized by the Fifth Circuit in *Bland*, the Third Circuit in the case at bar and by this Court in *Dept. of Employment v. United States*, 385 U. S. 355, 358 (1966), the legislative purpose of § 1341, like that of the federal equity doctrine from which it sprang,[14] was to prevent the disruption of local revenue raising by sweeping injunctions and to prevent rich taxpayers, particularly foreign corporations with access to the diversity jurisdiction of the district courts, from delaying payment of taxes in order to coerce favorable settlements out of less well-funded local governments.

14. *Township of Hillsborough, supra,* at 622-3.

Prior to *Bland*, the Fifth Circuit had so construed § 1341 in *Hargrave v. McKinney*, 413 F. 2d 320, 325 (1969) and it more recently has stated:

> "By passing the Tax Injunction Statute, Congress sought to treat the two classes, foreign corporations and resident citizens, alike.
>
> Second, Congress noted that allowance of injunction suits in the federal courts inevitably resulted in delays in the collection of public revenues by the state and local governments. Because of pressing need for the money, the state and local governments often had to compromise the claims, taking less than what was, in fact, due. By closing the federal courthouse door to taxpayer claims, Congress sought to end this burdensome disruption of local financing." *Tramel v. Schrader*, 505 F. 2d 1310, 1315-6 (5 Cir. 1975).

Of the appellate decisions cited by Petitioners, *ALCOA* and *Illinois Central R. R.* are examples of jurisdiction denied to the large corporation in order that taxes may be determined and collected by law and not by financial staying power. In addition to *ALCOA*,[15] the fear of the impact of injunctive relief upon the fisc of the state or local government was explicitly relied upon in closing the doors of the federal courts to plaintiffs in *Levitt, supra,* at 1151, quoting *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293, 301 (1943).

This need "to protect the integrity of the state treasury" [16] is the unifying theme of virtually all of decisions in this Court and in the Circuits on the applicability of § 1341. Thus, even though *Harper v. Bd. of Elections*

15. 522 F. 2d, at 1124.

16. *Bland, supra,* at 27, n. 21; *Hargrave, supra,* at 326.

was noted for probable jurisdiction, 380 U. S. 930 (1965), and decided on the merits, 383 U. S. 663 (1966), neither the majority nor the dissents make any reference to the fact that it was a suit to enjoin the collection of a state tax, with no pretext of any inadequacies of state procedures to test the constitutionality of the poll-tax. Similarly, where the principal stake of the state in its tax was not the revenue involved, this Court looked past § 1341 in *Ott v. Mississippi Barge Line Company*, 336 U. S. 169, 175 (1949). See also; e.g. *Central Steel & Wire Co. v. City of Detroit*, 101 F. Supp. 470 (E. D. Mich. 1951).

Plaintiffs here do not seek to reduce their own taxes or assessments, nor do they seek to enjoin the collection or force the refund of any tax. Their prayer for relief, beyond a general prayer that defendants be enjoined from continued violation of plaintiffs' civil rights, is quite specific and can be granted without the slightest adverse impact upon the fiscal integrity of Berks County or the City of Reading:

> "That defendants be required forthwith to cause the assessment of all owner-occupied residential property within their jurisdiction upon a non-discriminatory basis and to file and submit within one year of judgment herein and by September 1 of each succeeding year proof that the such assessments are uniform and not discriminatory. Such report shall be filed with the Court and submitted to the Attorney General."

Thus, this is not a case which is within the literal scope or the purpose of § 1341 because it does not seek to "enjoin, suspend or restrain the assessment, levy or collection of any tax." Quite to the contrary, plaintiffs seek a county-wide reassessment which could *increase* the total revenues of

the County by raising the assessments in White neighborhoods which the Complaint claims are under-assessed. Suits to remove or invalidate unconstitutional limits upon the taxes of others are within the traditional federal equity jurisdiction.

> "It is not a suit to enjoin restrain or suspend the collection of a tax, but to the contrary is a suit to require the collection of taxes which citizens of a county have voted to impose on freeholders in the county." *Hargrave, supra.*, at 326.
>
> "Plaintiffs herein do not fall within the proscription of 28 U. S. C. § 1341, inasmuch as they do not seek to enjoin, suspend or restrain the assessment, levy or collection of any tax; they seek rather to have declared unconstitutional a statutory limitation on the tax rates which Kentucky's school boards may levy on their school districts." *Baker v. Strode*, 348 F. Supp. 1257, 1263 (W. D. Ky. 1972) (3 Judge Court)

The Court of Appeals recognized this precise situation in the instant case.

> "They claim that the result of the discriminatory assessments is that plaintiffs bear a disproportionately heavy burden in their city and county real estate and school taxes. Plaintiffs aver that this discrimination is systematic and intentional. Cf. *Washington v. Davis*, 44 L. W. 4789, 4794 (1976).
>
> "The chief method of accomplishing this discrimination, according to plaintiffs, is defendants' failure to make annual assessments of property values as required by state law. See 72 P. S. § 5344(a) (Supp. 1975). Plaintiffs claim that property values in non-white areas of the county are declining, while values in white neighborhoods are increasing. Failure to

make the annual assessments thus results in a tax based on higher than actual value in non-white areas and one based on lower than actual values in white neighborhoods. Accordingly, the principal relief plaintiffs seek is an injunction requiring defendants immediately to cause the assessment of all residential property within the county on a non-discriminatory basis, and to make an annual assessment with proofs submitted to the court to demonstrate that the assessment is uniform and non-discriminatory." (A20)

"We further note that a federal hearing on plaintiffs' allegations will not produce the interference with state fiscal affairs that § 1341 and federal comity doctrine seek to avoid. If the district court finds that plaintiffs' claim has merit, it can and should mold relief so that Berks County can continue to receive tax revenues. Indeed, a beneficial result of this suit may be that assessments in the entire taxing district will be raised, thereby increasing county treasury revenues." (A36)

By contrast, the available state court remedies, while inadequate to plaintiffs' needs, would disrupt the fisc of the County of Berks and City of Reading. The only remedy at law available at the end of the administrative and judicial procedures in Pennsylvania is to have the assessment of the appellant taxpayers reduced to the actual county-wide norm.[17] If the "mass appeals" envisioned by the District Court in its hypothetical adequate remedy were to occur, *state court proceedings* would result in mass reduction of assessments and in mass refunds of taxes already paid.[18] There is no statutory remedy in Pennsylvania for raising the taxes of those benefiting from discrimination, i.e., a true equalization remedy. Moreover, in addition to probably insurmountable jurisdictional difficulties,[19] an equity action in state court could not yield a general reassessment or equalization. Pennsylvania's equity courts have never recognized the right of a taxpayer to force the upward revaluation of the property of others, even where the deliberate, discrimination underassessment of such property was alleged. *North Side Laundry Co. v. Bd. of Property Assessment,* 79 A. 2d 419, 366 Pa. 636, *app. dismissed,* 342 U. S. 803 (1951).

17. 72 P. S. § 5350 (A46-7).

18. 72 P. S. § 5350(d) (A47).

Finally, where the only remedy available to plaintiffs is an individual reduction to a county-wide *average* assessment ratio, the disparity and discrimination complained of is merely reduced. It is not eliminated. Only a simultaneous raising of the assessments of the favored parties can eliminate the unconstitutional discrepancy in this case.

The Court of Appeals noted that to permit the greater financial resources of the county to insulate discriminatory taxation by means of a burdensome, piecemeal review would be to stand the history and purpose of § 1341 "on its head" (A36). To expose the fiscal integrity of the County to wholesale assessment reductions and refunds in repeated suits in state courts,[20] where a federal remedy can be molded in a single action to protect both the needs of the County and the rights of the plaintiffs would equally be topsy-turvy justice.

III. The Decision of the Court of Appeals Follows Applicable Decisions of This Court.

The significance of *Matthews v. Rodgers,* 284 U. S. 521 (1932), and of *Great Lakes Dredge & Docks Co. v.*

19. *Supra,* at pp. 6-7.

20. Without eliminating the discrimination complained of by plaintiffs.

Huffman, supra, in a case such as this where (1) the claims of class members do not involve a common determinative question of statutory interpretation such that one individual action could resolve the issue for everyone and (2) the claims of each individual taxpayer require *in futuro* relief which would mean a multiplicity of suits in the state courts has been adequately discussed by the Court of Appeals (A23-4, 33). *Matthews* particularly distinguishes the need for multiple lawsuits as grounds for separate federal jurisdiction, 204 U. S., at 529-30. The Court of Appeals correctly cited other authority for that proposition as well. *Hale v. Allinson,* 188 U. S. 56, 78 (1903). *Graves v. Texas Company,* 298 U. S. 393, 403 (1936).[21]

The leading holdings of this Court were similarly harmonized in *United States Steel Corp. v. Multistate Tax Commission,* 367 F. Supp. 107, 115-6 (S. D. N. Y. 1973):

> "The necessity for such multiplicity of actions cannot by any stretch of the imagination be considered a viable alternative to federal suit, but rather, falls into the category of state remedies which are considered 'unduly burdensome.' *Georgia R. R. & Banking Co. v. Redwine, supra,* 342 U. S. 299, 72 S. Ct. 321, 96 L. Ed. 335.
>
> "This interpretation of the statute is supported by the case of *Matthews v. Rodgers,* 284 U. S. 521, 52 S. Ct. 217, 76 L. Ed. 447 (1932), cited by defendants. The Court in *Matthews* refused to grant plaintiff taxpayers an injunction against a state taxing authority where they had an adequate remedy under state law by paying the tax and suing or a refund.

21. Since § 1341 is co-extensive and of equal force with traditional federal equity principles, cases prior to its adoption are persuasive to its interpretation *Township of Hillsborough v. Cromwell, supra.*

> In particular, the Court held that the state remedy was adequate *precisely because* each taxpayer would only have to bring one suit to vindicate his rights as a taxpayer. The Court indicated, however, that federal equity jurisdiction would obtain if plaintiffs would have had to bring numerous suits to vindicate their rights: 'In general the jurisdiction of equity to avoid multiplicity of suits at law is restricted to cases where there would otherwise be some necessity for the maintenance of numerous suits between the same parties involving the same issues of law and fact.' Id. at 529-530, 52 S. Ct. at 221. Cases decided after the passage of the present version of § 1341 have sustained federal jurisdiction where the alternative state remedy involved a multiplicity of suits. See *Georgia RR & Banking Co. v. Redwine, supra,* 342 U. S. 299, *Nashville RR v. Public Service Commission,* 249 F. Supp. 894 (M. D. Tenn. 1966), *aff'd,* 389 F. 2d 247 (7th Cir. 1968)." (emphasis in original).

Petitioners apparently recognize that *Township of Hillsborough v. Cromwell, supra,* dooms the Petition and seeks to characterize that case as a "deviation" to be restricted to a situation where the state remedy is not merely uncertain, but precluded beyond doubt or hope.[22] *Hillsborough* has never been cited for so narrow a proposition. Rather, as stated by the Court of Appeals, the uniform rule in this Court and elsewhere is that:

> "It is sufficient for a finding of inadequacy that the availability of the state remedy be merely uncertain. *Hart v. Wechsler, supra* note 7, at 979. *Spector Motor Service, Inc. v. O'Connor,* 340 U. S. 602,

22. Petition, p. 17, n. 10.

605 (1951); *Township of Hillsborough v. Cromwell*, 326 U. S. 620 (1946); *Spector Motor Service, Inc. v. McLaughlin*, 323 U. S. 101 (1944)." (A25).[23]

23. The other principle for which *Township of Hillsborough* is frequently cited is also quite pertinent to this Court's denying the Petition. Where questions of the evaluation and interpretation of state law are determinative, the Supreme Court is "hesitant to overrule decisions by federal courts skilled in the law of particular states unless their conclusions are shown to be unreasonable . . . 'On such questions we pay great difference to the views of judges of those courts' who are familiar with the intricacies and trends of local law and practice.'" *Bishop v. Wood*, 44 L. W. 4820, 4822, n. 10, — U. S. — (June 10, 1976); quoting *Township of Hillsborough, supra*, at 629-30. See also *Runyon v. McCrary*, 44 L. W. 5034, 5041, — U. S. — (June 25, 1976). While differing on the legal conclusion of "adequacy", both the District and Circuit Courts agreed that Pennsylvania's legal remedies in state court were deficient on their face and would call for novel and unprecedented measures, and that Pennsylvania equity practice is "contracted" in the field of taxation. In this case, the Court of Appeals speaks with particular authority on the matter of Pennsylvania administrative and governmental law because the author of the appellate decision is the Honorable Max Rosenn. His distinctions and accomplishments as listed in the 39th Edition of *Who's Who In America* include serving as solicitor for various municipal boroughs, as chairman of the Pennsylvania Commission on Metropolitan Government and as Secretary of the Pennsylvania Department of Public Welfare. The principle enunciated in *Township of Hillsborough* of relying upon the lower courts for guidance in ambiguous or novel questions of state law is fully applicable here.

CONCLUSION.

For all of the reasons set forth hereinabove, it is respectfully submitted that the instant Petition should be denied and that the mandate of the Court of Appeals should be permitted to issue.

Respectfully submitted,

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